

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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ROXANN D.,

Plaintiff,

v.

6:21-CV-0345  
(ML)

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

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APPEARANCES:

OF COUNSEL:

OLINSKY LAW GROUP  
Counsel for the Plaintiff  
250 South Clinton Street-Suite 210  
Syracuse, New York 13202

ALEXANDER C. HOBAICA, ESQ.

SOCIAL SECURITY ADMINISTRATION  
Counsel for the Defendant  
J.F.K. Federal Building, Room 625  
15 New Sudbury Street  
Boston, Massachusetts 02203

MOLLY CARTER, ESQ.  
Special Assistant U.S. Attorney

MIROSLAV LOVRIC, United States Magistrate Judge

**ORDER**

Currently pending before the Court in this action, in which Plaintiff seeks judicial review of an adverse administrative determination by the Commissioner of Social Security, pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3), are cross-motions for judgment on the pleadings.<sup>1</sup> Oral

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<sup>1</sup> This matter, which is before me on consent of the parties pursuant to 28 U.S.C. § 636(c), has been treated in accordance with the procedures set forth in General Order No. 18. Under that General Order once issue has been joined, an action such as this is considered procedurally, as if cross-motions for judgment on the pleadings had been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

argument was heard in connection with those motions on September 8, 2022, during a telephone conference conducted on the record. At the close of argument, I issued a bench decision in which, after applying the requisite deferential review standard, I found that the Commissioner's determination was supported by substantial evidence, providing further detail regarding my reasoning and addressing the specific issues raised by Plaintiff in this appeal.

After due deliberation, and based upon the Court's oral bench decision, which has been transcribed, is attached to this order, and is incorporated herein by reference, it is

**ORDERED** as follows:

- 1) Plaintiff's motion for judgment on the pleadings (Dkt. No. 17) is DENIED.
- 2) Defendant's motion for judgment on the pleadings (Dkt. No. 18) is GRANTED.
- 3) The Commissioner's decision denying Plaintiff Social Security benefits is AFFIRMED.
- 4) Plaintiff's Complaint (Dkt. No. 1) is DISMISSED.
- 5) The Clerk of Court is respectfully directed to enter judgment, based upon this determination, DISMISSING Plaintiff's Complaint in its entirety and closing this case.

Dated: September 9, 2022  
Binghamton, New York

A handwritten signature in black ink, reading "Miroslav Lovric", written over a horizontal line.

Miroslav Lovric  
United States Magistrate Judge  
Northern District of New York

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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D

vs.

6:21-CV-0345

COMMISSIONER OF SOCIAL SECURITY

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DECISION AND ORDER

September 8, 2022

The HONORABLE MIROSLAV LOVRIC,  
DISTRICT MAGISTRATE JUDGE

A P P E A R A N C E S

For Plaintiff: ALEXANDER HOBAICA, ESQ.

For Defendant: MOLLY CARTER, ESQ.

*Ruth I. Lynch, RPR, RMR, NYSRCR  
Official United States Court Reporter  
Binghamton, New York 13901*

1           THE COURT: All right. The Court's going to begin  
2 its decision and analysis as follows:

3           So first, plaintiff has commenced this proceeding  
4 pursuant to Title 42 United States Code Sections 405(g) and  
5 1383(c) to challenge the adverse determination by the  
6 Commissioner of Social Security finding that she was not  
7 disabled at the relevant times and therefore ineligible for  
8 the benefits that she sought.

9           By way of background, the Court notes as follows:  
10 Plaintiff was born in 1984. She is currently approximately  
11 37 years of age. She was approximately 32 years of age at  
12 the alleged onset of her disability on May 13 of 2017.  
13 Plaintiff stands approximately 5 feet 2 inches in height and  
14 weighs approximately 208 pounds.

15           Plaintiff has a GED and an apprentice electrician  
16 certificate.

17           Procedurally, the Court notes as follows for this  
18 case: Plaintiff applied for Title II and Title XVI benefits  
19 on October 12, 2017, alleging an onset date of May 13, 2017.  
20 In support of her claim for disability benefits, plaintiff  
21 claims disability based on physical impairments.

22           Administrative Law Judge Mary Sparks conducted a  
23 hearing on August 30th, 2019, to address plaintiff's  
24 application for benefits. ALJ Sparks issued an unfavorable  
25 decision on November 13, 2019. That became a final

1 determination of the agency on January 2, 2021, when the  
2 Social Security Administration Appeals Council denied  
3 plaintiff's application for review.

4 This action was commenced on March 25th of 2021,  
5 and it is timely.

6 In her decision, ALJ Sparks applied the familiar  
7 five-step test for determining disability.

8 At step one, the ALJ concluded that plaintiff had  
9 not engaged in substantial gainful activity since May 13 of  
10 2017, the alleged onset date.

11 At step two, the ALJ concluded that plaintiff  
12 suffers from severe impairments that impose more than  
13 minimal limitations on her ability to perform basic work  
14 activities. Specifically the ALJ found that plaintiff  
15 suffers from status post -- status post total disc  
16 replacement C5 through C6 and C6 through C7; disc bulge at  
17 C5 through C6; degenerative changes to the cervical spine;  
18 and also obesity.

19 At step three, ALJ Sparks concluded that  
20 plaintiff's conditions do not meet or medically equal any of  
21 the listed presumptively disabling conditions set forth in  
22 the commissioner's regulations. And the ALJ focused on  
23 listings 1.04 dealing with disorders of the spine; 1.00  
24 dealing with musculoskeletal disorders; and SSR 19-2p  
25 dealing with obesity.

1           Next, the ALJ determined that plaintiff retains  
2     the residual functional capacity to perform light work  
3     except that she requires the option to sit or stand  
4     alternatively and at will, and provided she is not off task  
5     more than 10 percent of the workday. The ALJ continued,  
6     plaintiff can no more than occasionally use the left upper  
7     extremity to perform pushing or pulling; that plaintiff can  
8     never crawl and climb ladders, ropes, or scaffolds; that no  
9     more than occasionally can the plaintiff climb ramps or  
10    stairs, stoop, crouch, and kneel; that plaintiff can perform  
11    no more than occasional rotation, flexion, and, excuse me,  
12    or extension of the neck. The ALJ continued that plaintiff  
13    can perform no more than occasional reaching, including  
14    overhead, with the left upper extremity. And, lastly, the  
15    ALJ noted that plaintiff can perform no more than frequent  
16    feeling with the left upper extremity.

17           At step four, the ALJ concluded that based on the  
18    testimony of the vocational expert plaintiff could perform  
19    her past relevant work as unit clerk as actually performed  
20    and is therefore not disabled.

21           In the alternative, the ALJ proceeded to step five  
22    and concluded that based on the testimony of the vocational  
23    expert and considering plaintiff's age, education, work  
24    experience, and RFC, she is capable of performing the  
25    requirements of representative occupations such as routing

1 clerk, toll collector, and dealer accounts investigator.

2 Thus, the ALJ found that plaintiff was not  
3 disabled.

4 Now, as you know, the Court's functional role in  
5 this case is limited and extremely deferential. I must  
6 determine whether correct legal principles were applied and  
7 whether the determination is supported by substantial  
8 evidence, defined as such relevant evidence as a reasonable  
9 mind would find sufficient to support a conclusion. As the  
10 Second Circuit Court of Appeals noted in the case of  
11 Brault V. Social Security Administration Commissioner,  
12 that's found at 683 F.3rd 443, a 2012 Second Circuit case,  
13 the Circuit noted that this standard is demanding, more so  
14 than the clearly erroneous standard. The Second Circuit  
15 noted in Brault that once there is a finding of fact, that  
16 fact can be rejected only if a reasonable fact-finder would  
17 have to conclude otherwise.

18 Now, on appeal in this matter plaintiff raises two  
19 contentions. First, plaintiff argues that substantial  
20 evidence does not support the ALJ's RFC determination  
21 because the ALJ failed to adequately evaluate the opinions  
22 of treating physicians Dr. Karen Banks-Linder and  
23 Dr. Michael Miller. And, secondly, plaintiff also contends  
24 and argues that the ALJ failed to properly evaluate  
25 plaintiff's subjective symptoms.

1           The Court begins its analysis and sets forth as  
2 follows:

3           With respect to plaintiff's first argument, that  
4 the ALJ improperly evaluated the opinions of  
5 Dr. Banks-Linder and Dr. Miller, there are three opinions at  
6 issue. First, December 7th -- December of 2017 there is an  
7 opinion from Dr. Banks-Linder that the ALJ found generally  
8 persuasive, and plaintiff does not challenge that finding as  
9 it relates to this opinion.

10           Secondly, there is an opinion of August 2019 from  
11 Dr. Banks-Linder which the ALJ did not find persuasive, and  
12 plaintiff challenges this -- this finding as to this  
13 opinion.

14           And then, thirdly, there is an opinion of August  
15 2019 from Dr. Miller which the ALJ did not find persuasive,  
16 and plaintiff challenges the ALJ's finding as to this  
17 opinion.

18           As defendant identified in her brief,  
19 Dr. Banks-Linder opined that the limitations outlined in her  
20 medical source statement dated December 13, 2017, quote,  
21 existed to the same degree since at least, end of quote, May  
22 2017. See docket number 11 at 390, transcript page 386.  
23 When Dr. Banks-Linder provided a new medical source  
24 statement dated August 28th of 2019, which included  
25 significantly more limitations, she opined again that the



1 limitations, quote, existed to the same degree since May 13,  
2 2017, end quote. See docket number 11 at 691, transcript  
3 page 687. As the ALJ concluded, Dr. Banks-Linder's opinions  
4 are inconsistent because she opined that plaintiff had two  
5 very different levels of limitation during the same time  
6 period; at least May 2017 through December 13th of 2017.  
7 This inconsistency was a reasonable basis for the ALJ's  
8 determination that Dr. Banks-Linder's opinion dated  
9 August 28, 2019 was not persuasive.

10 Although plaintiff argues and points to evidence  
11 in the record supporting her contention that her condition  
12 worsened after her neck surgery, there was also evidence in  
13 the record as highlighted by defendant and the ALJ  
14 supporting the conclusion that plaintiff's condition did not  
15 significantly change between December 2017 and August 2019.  
16 In addition, the ALJ supportably concluded that evidence in  
17 the record did not support Dr. Banks-Linder's August 2019  
18 off task and absenteeism limitations. The fact that some  
19 evidence could support plaintiff's position is not enough to  
20 compel remand under the deferential substantial evidence  
21 standard of review.

22 To the extent that plaintiff argues that the ALJ's  
23 explanation was insufficient, I find that argument  
24 unpersuasive. The Social Security Act does not require the  
25 ALJ to explain how she considered every piece of evidence in

1 the record. The ALJ's decision here viewed as a whole is  
2 not so obscure as to make judicial review futile.

3 Further, I find that for the reasons stated in  
4 defendant's brief, the ALJ supportably found that  
5 Dr. Miller's opinion was not persuasive. As the ALJ noted,  
6 Dr. Miller last treated plaintiff approximately two years  
7 before rendering his opinion, which was before plaintiff's  
8 neck surgery. As the ALJ supportably concluded, plaintiff's  
9 condition improved after her surgery.

10 For these reasons, and the reasons stated in  
11 defendant's brief, I find that substantial evidence supports  
12 the ALJ's RFC assessment and evaluation of the opinions of  
13 Dr. Banks-Linder and Dr. Miller.

14 Second, I find that -- I find that for the reasons  
15 stated in defendant's brief, substantial evidence supports  
16 the ALJ's evaluation of plaintiff's subjective statements.  
17 Moreover, I find that the ALJ's decision included a logical  
18 bridge between the evidence of record and her conclusion  
19 that plaintiff's surgery was a success and plaintiff's  
20 post-surgical symptoms were insignificant.

21 As the ALJ noted, plaintiff underwent neck surgery  
22 in November 2017. The ALJ noted that although plaintiff  
23 complained of neck pain and arm pain and weakness in  
24 November 2018, being approximately 12 months after her  
25 surgery, she did not follow through with additional

1 treatment, even conservative treatment, after raising these  
2 symptoms. The ALJ noted that other than a February 2018 CT  
3 myelogram, the record does not reference plaintiff's  
4 cervical spine issues after November 2018. In addition,  
5 there were several dates between plaintiff's surgery and  
6 November of 2017 and the complaint in November 2018 during  
7 which plaintiff reported that her condition had improved  
8 since the surgery.

9 In addition, the record contains substantial  
10 evidence reflecting plaintiff's improvement after her  
11 cervical procedure in November 2017, including findings  
12 documenting a full range of motion, full strength, and  
13 intact neurological examinations. These were supportable  
14 reasons to discount plaintiff's subjective statements  
15 regarding pain.

16 For these reasons and based upon this analysis and  
17 as a result thereof, I therefore conclude and find  
18 plaintiff's motion for judgment on the pleadings is denied.  
19 Defendant's motion for judgment on the pleadings is granted.  
20 Plaintiff's complaint is dismissed. And the Commissioner's  
21 decision denying plaintiff benefits is affirmed.

22 This constitutes the decision and reasoning of the  
23 Court.

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